

RAY E. BUSH

IBLA 75-182

Decided April 7, 1975

Appeal from a decision of the Utah State Office, Bureau of Land Management, denying petition for reinstatement of oil and gas lease U-18582-J, a noncompetitive lease terminated for failure to pay the annual rental on or prior to the anniversary date.

Affirmed.

1. Oil and Gas Leases: Reinstatement -- Oil and Gas Leases: Rentals

An oil and gas lease terminated by operation of law for failure to pay the advance rental timely may be reinstated only if the lessee shows by satisfactory evidence that the failure to pay the rental on or before the anniversary date was either justifiable or was not due to a lack of reasonable diligence.

APPEARANCES: Ray E. Bush, pro se.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

Ray E. Bush appeals from a decision dated September 5, 1974, by the Utah State Office, Bureau of Land Management, which denied a petition for reinstatement of oil and gas lease U-18582-J, a nonproducing lease which terminated by operation of law pursuant to 30 U.S.C. § 188(b) (1970), for failure to make timely payment of the annual rental, due August 1, 1974.

The record shows that the envelope containing appellant's rental payment was postmarked August 2, 1974, and received by the State Office on August 5, 1974. Payment was in the form of a personal check, signed by appellant's wife, Helen Bush, and dated July 28, 1974.

In the petition for reinstatement, filed by Mrs. Bush on behalf of her husband and dated August 13, 1974, Mrs. Bush gave the date on which she mailed the remittance as July 28, the date shown on the check. In his appeal appellant asserts that Mrs. Bush actually mailed the lease payment at the post office in Winter Park, Florida, on July 29, 1974. With the appeal, appellant enclosed a copy of a letter from E. M. Gaulding, Superintendent of Mails, Winter Park, Florida, which states:

Mrs. Bush states she mailed a letter here July 29, 1974, which was not postmarked until August 2, 1974.

Normally this is unusual. However, since this office is under area mail processing and all of our mail is sent to Orlando, Florida, for postmarking, there is a possibility that this mail could have been delayed in Orlando. It could have been delayed in this office also.

It is difficult to state where or if the delay was caused by the U.S. Postal Service.

We have had similar delays reported before.

[1] Section 31(b) of the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 188(b) (1970), provides that a nonproducing oil and gas lease will terminate by operation of law if the annual rental has not been received on or before the anniversary date of the lease. The lease may be reinstated only if the full amount owed has been paid or tendered within 20 days after the anniversary date, and if it has been shown to the satisfaction of the Secretary that the failure to make timely payment was "either justifiable or not due to a lack of reasonable diligence on the part of the lessee \* \* \*." 30 U.S.C. § 188(c) (1970). A Departmental regulation says that:

\* \* \* [r]easonable diligence normally requires sending or delivering payments sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the payment. \* \* \*

43 CFR 3108.2-1(c)(2). The burden of showing a justifiable excuse or lack of reasonable diligence is upon the lessee. Id.

Ordinarily it is inferred that date of placing a document into the mails is evidenced by the postmark stamped upon it. Such evidence may, however, be rebutted by satisfactory proof that the document actually was mailed on a date prior to that shown by the postmark. Francis Anglado, 18 IBLA 162 (1974); Mary White, 13 IBLA 363 (1973); A. Anton Frederickson, A-30793 (November 28, 1967); John W. Monzel, A-28817 (August 31, 1961).

We do not find appellant's showing satisfactory. First, there is a discrepancy between the dates given, respectively, by Mr. and Mrs. Bush as to when the envelope with the payment was actually placed in the mails. This discrepancy tends to erode credence in their assertions. Cf., Martha N. Jackson, 18 IBLA 92 (1974). Second, the statement from the Postmaster, while admitting of the possibility of delay in postmarking the mail, also points out that such a delay is unusual. In short, we are not satisfied that there was reasonable diligence exercised here within the meaning of the regulation quoted above. Appellant has not shown any justifiable excuse for the delay either.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Joan B. Thompson  
Administrative Judge

We concur:

Edward W. Stuebing  
Administrative Judge

Douglas E. Henriques  
Administrative Judge

